

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 94-0635 CS
Controlled Substance Excise Tax
For The Tax Period: 1994**

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ISSUE

Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5, Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995)

The taxpayer protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana on November 8, 1993. Taxpayer submitted a negotiated plea agreement to the Vigo Superior Court on March 15, 1994. The court accepted the guilty plea and entered a judgment finding the taxpayer guilty of possession of cocaine and possession with intent to distribute marijuana on April 15, 1994. The Department issued the taxpayer a Controlled Substance Excise Tax (CSET) jeopardy assessment and demand on May 5, 1994. Taxpayer filed a protest of the CSET assessment via counsel on June 23, 1994.

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

In Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995), the Court held that a controlled substance excise tax assessment was a punishment for purposes of double jeopardy analysis. The Court further stated that the jeopardy attaches when the Department serves the taxpayer with its Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand. In determining which jeopardy is barred as the second jeopardy the relevant dates must be considered.

Taxpayer was presented with the Record of Jeopardy Findings and Jeopardy Assessment Notice and Demand on May 5, 1994. Pursuant to records provided by the taxpayer, a guilty plea was accepted and judgment entered on April 15, 1994. The Department finds, in accordance with the law as stated in Cliff, that the tax assessment and jeopardy did not come first in time and were barred by the principles of double jeopardy. In this case, the Department's assessment came after the taxpayer's plea agreement.

FINDING

The taxpayer's protest is sustained.